

64 Redirect examination by Mr. F. W. CLANCY:

Q. I understood you to say that the road from Pecos to Cerrillos went in northeasterly direction from Pino's ranch?

A. Yes, sir; for a little distance, and then it runs easterly—that is what I meant to say.

Mr. CLANCY: I now offer this map in evidence.

Mr. REYNOLDS: We object to the map on the ground of its not having been sufficiently proven to identify the boundaries of the various locations and particularly with reference to the land sued for, and as not having been sufficiently identified so as to locate with reasonable accuracy the land grant upon which the suit is predicated nor the property sued for or the boundaries of the grant itself.

Objection overruled by the court.

Exception reserved by defendant's counsel.

The map was here marked Plaintiff's Exhibit I.

Mr. CLANCY: The line draw across from east to west along the line marked "Creek" or just above that, is the south boundary of the pueblo Viejo de la Cienega grant.

Mr. REYNOLDS: We make the further objection that the south line of the alleged grant is an arbitrary line drawn by counsel and not by the witness or any surveyor.

Objection overruled.

Exception reserved by defendant's counsel.

FELIPE PINO sworn.

Direct examination by Mr. F. W. CLANCY:

Q. What is your name?

A. Felipe Pino.

Q. Where do you reside?

A. I live in Santa Fe.

Q. How long have you lived in Santa Fe?

A. I was born here. I have lived here since I was born.

Q. When were you born?

A. I was born in 1839.

Q. Have you ever been acquainted with a man named Salvador Leyba?

A. Yes, I knew him.

Q. When did you first know him?

A. I knew him when we were about 8 or 9 years of age.

Q. Was he older or younger than you?

65 A. I don't know whether he was older. We looked about the same age.

Q. Where did Salvador Leyba live when you first knew him?

A. He lived on the other side of the river at a place called Analco, in San Miguel.

Q. With whom was he living when you first knew him?

A. He lived with an aunt of his named Josefa Leyba.

Mr. DAVIS: I object to that part of the answer in which he says that Josefa Leyba was the aunt of Salvador Leyba.

Mr. CLANCY: I expect to show that he knew the family for many years, and in that way he has knowledge.

The COURT: Proceed.

Q. Do you know, or did you ever hear who was the father of this Salvador Leyba?

Objected to by defendant's counsel.

The COURT: Answer yes or no.

A. I heard say who his father was.

Mr. CLANCY:

Q. From whom did you ever hear who his father was?

A. I heard him say so; and I heard it from the mother—the woman who raised him.

Q. Who raised Salvador Leyba?

A. Josefa Leyba.

Q. Who was the mother of Salvador Leyba?

A. Inez Apodaca.

Mr. DAVIS: We object to this testimony. The witness means of knowledge is not shown, and we move to strike it out.

The COURT: How do you know that Inez Apodaca was the mother of Salvador Leyba?

A. Because she went to my house herself to ask for a girl, Juanita Alarid, who was a sister-in-law of mine, she came to ask for this girl to be married to Salvador Leyba.

Mr. CLANCY:

Q. Did you ever hear Josefa Leyba say who was the father and mother of Salvador Leyba?

A. Yes, sir.

Q. Who did she say were his parents?

A. Juan Angel Leyba was his father, and Inez (Ynez) Apodaca was his mother.

Q. Did you ever hear Salvador Leyba say who his parents were?

66 A. Yes, sir.

Q. What did he say on that subject?

A. That Juan Angel Leyba was his father and Inez Apodaca was his mother.

Q. Did you ever personally know Juan Angel Leyba?

A. I did not.

Q. Did you ever hear from any one in the family how he died?

A. I heard Salvador Leyba say and also his mother.

Q. What did they say about how he died?

A. They said that the Indians killed him.

Q. Did you ever hear them say where he was killed by the Indians?

A. They told me that it was at Ojo -el Coyote where he was killed —at his own ranch—the ranch of Juan Angel Leyba.

Q. Did you ever hear from Josefa Leyba or Salvador Leyba tell to you who their ancestors were and their family?

A. Yes, sir.

Q. If you heard from them, or either of them, state what they told you as to who was the father of Josefa Leyba?

A. The father of Josefa Leyba was Jose de Leyba.

Q. Did you ever hear from Josefa if she had any brothers or sisters?

A. I heard Josefa say that she had one brother and one sister. The sister I knew myself, Manuela Leyba, and Juan Angel Leyba, the brother, I did not know.

Q. Did you ever hear when he was killed?

A. I did hear.

Q. About when was he killed from what you heard?

A. I don't know the date of the year, but I heard it said he was killed by the Indians.

Q. Did you hear whether it was before or after Salvador was born?

A. Salvador was already born when his father was killed.

Q. Did you ever hear from Salvador or Josefa Leyba how it happened Josefa Leyba raised Salvador Leyba?

A. Yes, sir.

Q. How did it happen?

A. Josefa Leyba used to talk to me frequently. She visited the house of my parents frequently, and she used to say: "Now I have another son, although I have no children, the son of my brother

67 Juan Angel Leyba has been given to me so I might raise him as my own son." That is what I heard her say.

Q. Did you ever hear from Salvador Leyba or Josefa Leyba about the grant called the Leyba Grant?

A. I heard Josefa Leyba say, and also Salvador, when he became my wife's brother-in-law.

Q. What did Josefa Leyba tell you about the Leyba grant?

A. That her son, Salvador Leyba, had a grant, and had several other interests within the grant through inheritance of his deceased father. That is what she told me.

Mr. DAVIS: I move to strike out that answer on the ground you cannot show ownership of real property upon the statements of individuals as to whether they owned it themselves, or whether their ancestors owned it.

Mr. CLANCY: This is to identify Salvador with this property.

Objection sustained by the court.

Exception reserved by plaintiff.

Q. Do you know who was the grandfather of Salvador Leyba?

A. Salvador Antonio Leyba.

Q. Did you ever hear from Josefa Leyba anything about the family of Leybas who owned this grant from the grantee down?

A. Yes, sir.

Q. From what she told you, who was the grantee?

Mr. DAVIS: We object to this on the same ground.

Mr. CLANCY: This is hearsay evidence as to pedigree by a person long since deceased.

Mr. DAVIS: I have not been objecting to these questions because I expect to move to strike out at the end of the examination.

Mr. CLANCY: I am only trying to prove the family and identify this man as one of the family, and this is directly in line of meeting the objection to the will of Simon Leyba of 1783.

The COURT: I think if this man can prove that Simon had a son Salvador, I will admit that.

Mr. CLANCY:

Q. From what Josefa Leyba told you who was the original grantee?

A. Jose de Leyba.

Q. Now did you hear from her whether Jose de Leyba had any children or not?

A. I do not know.

68 Q. You have said that Salvador Antonio Leyba was the grandfather of Salvador Leyba—did you ever hear who was the father of Salvador Antonio Leyba?

A. Yes, sir. It must be Jose de Leyba.

Q. Did you ever hear from either of those Leyba's anything about a Leyba called Simon?

A. I did hear of such.

Q. Now, who was Simon Leyba?

A. Simon Leyba was the father of Salvador Antonio Leyba.

Q. Did you ever hear from them who was the father of Simon de Leyba?

A. Yes, sir.

Q. What did they say about that?

A. That Jose de Leyba was his father.

Q. Do you remember when you first heard that Juan Angel Leyba had been killed by the Indians?

A. I remember that I heard this said at one time when I was at the Ojo del Coyote. I don't remember the date. I had to come there for some oxen. My father sent me for that purpose, and those who were there—I don't remember their names—said that he had been killed before by the Indians.

Mr. DAVIS: I move to strike out the last part of the answer of this witness to the effect that he went to Coyote Springs and there some people whom he did not know told him that Juan Angel Leyba had been killed by the Indians. That is certainly as absolute a piece of hearsay evidence as could be offered in any court.

The COURT: I will strike out the latter part of the answer of the witness as to what the people told him.

Q. About how old were you when you first heard that Juan Angel Leyba had been killed by the Indians?

A. I was fifteen or sixteen years of age.

Q. What was the name of your first wife?

A. Josefa Alarid.

Q. What was the name of her sister who was asked in marriage for Salvador Leyba?

A. Juanita Alarid.

Q. At the time she was asked for marriage, where was she living?

A. She lived with me at my house, in my home. She was a sister of my wife.

Q. Were her parents living at that time?

69 A. No, sir.

Q. Where was Salvador Lebya living at that time?

A. He lived at the house of his aunt, Josefa, at San Miguel.

Q. Who came to ask for Juanita?

A. Many people went there.

Q. Who were they?

A. Many of them went, his aunt Josefa, and two daughters of Josefa and the mother of Salvador, Ynez Apodaco. I remember this. They came to ask for her.

Q. Do you know wher- the old road is from Cerrillos to Pecos?

A. Yes, sir.

Q. About how far is that from Santa Fe?

A. Where the road is?

Q. Yes, sir.

A. Less than 12 or 13 miles.

Q. What is the general direction of that road?

A. The road form Cerrillos Pecos?

Q. Yes, sir.

A. It runs from Cerrillos to the east.

Q. Do you know where the road to San Marcos is?

A. Yes, sir.

Q. Does the old road from Cerrillos to Pecos, does that cross the San Marcos road or not?

A. Yes, sir; it crosses it.

Q. Do you know where the Coyote Spring is?

A. I knew the Ojo del Coyote many years ago.

Q. In what direction is the Ojo del Coyote from the old road which runs from Cerrillos to Pecos?

A. To the south of the road.

Q. And in what direction is that spring from the San Marcos road?

A. To the north of the road and northwest.

Q. Do you know where the San Marcos Spring is?

A. Yes, sir.

Q. In which direction from that spring is the Ojo del Coyote?

A. To the north of the San Marcos.

Q. Now describe that Ojo del Coyote—how is it situated in the grant?

70 A. The Ojo del Coyote is situated in an arroyo which has been called the Arroyo del Oregano.

Q. When you were at the Ojo del Oregano as a boy did you see there any signs of habitation at the Ojo del Coyote Spring?

A. I saw ruins of houses.

Q. Describe those ruins as well as you can?

A. The ruins I saw contained walls, something like a *torreon* or tower.

Q. How large a house did that appear to be there?

A. It was a small house. I was there many years ago. It had the appearance of being a small house, but I also saw the ruins of corrales.

Q. Where were those ruins relative to the position of the springs, in which direction from the springs?

A. They were north of the springs about 50 or 60 feet distant—that is my recollection now.

Q. Do you know the Penasco Blanco de los Golondrinas?

A. Yes, I know it.

Q. Do you know the house where Don Nasario Gonzales lived at La Cienega?

A. Yes, sir.

Q. In what direction is the Penasco Blanco from the house of Nasario Gonzales?

A. It is north of the house.

Q. And how far away?

A. About a mile and a quarter, may be a little more.

Q. Do you know the hill wher- the Turquoise mines are?

A. I know it.

Q. In which direction is that hill from the Ojo del Coyote?

A. It is to the west.

Q. And does that hill lie to the east or west of the Penasco Blanco?

A. It is to the south of the Penasco Blanco—the mine.

Q. Can you tell whether it would be east or west of a north and south line drawn through the Penasco Blanco?

A. Yes, sir.

Q. If a line — drawn north and south through the Penasco Blanco, and extended to the south, would that hill where the mine is be to the east or west of that line?

A. It would lie to the west the Penasco Blanco.

Q. Well, that is answering it the other way. Now, is Salvador Leyba alive or dead?

71 A. He is dead.

Q. How long has he been dead?

A. I believe he died in the year 1896 or 1897.

Q. A few years ago then?

A. Yes, a few years ago.

Q. Is Josefa Leyba alive or dead?

A. She is dead.

Q. Do you know how long she has been dead?

A. No, sir, I do not know. I was not in Santa Fe when she died.

Q. Where were you at the time she died?

A. I was then a soldier.

Q. In what war?

A. In the War of the Rebellion between the North and South.

Mr. DAVIS: I move the court to strike from the record, and take from the consideration of the jury all statements to which this witness has testified, made by Salvador Leyba and Josefa Leyba as to the fact of Juan Angel Leyba being killed by the Indians, and as to the place and time when he was killed. Whether or not hearsay testimony may be admissible for the purpose of showing pedigree, it certainly is not admissible for the purpose of showing a definite fact which in no way comes under the head of pedigree. It makes no difference to the pedigree in this case where Juan Angel Leyba was killed, or whether he was killed or not, and it comes within none of the recognized exceptions to the rules admitting or excluding hearsay. On these grounds I move to strike out and take from the jury all of that testimony.

Mr. F. W. CLANCY: I never heard just that sort of an objection, but it occurs to me that any evidence as to pedigree, statements as to the death, manner of death and time of death, must be necessarily admissible, tending to throw light on the whole question—statements made by members of the family.

Mr. DAVIS: I desire further to move to strike out all the testimony of this witness as to statements made to him by Salvador Leyba or Josefa Leyba—their statements as to who was the father of Salvador Leyba on the same ground on which we objected to the admission of the will, that is to say, on the ground that there is absolutely no testimony to show that Josefa Leyba or Salvador Leyba were related to the members of the Leyba family in this suit, excepting their own statements made to this witness, and under the rules as laid down in the few authorities I showed to the court there must be some extrinsic evidence of their relation to the family aside from their own evidence.

I further move to strike out and take from the jury all the testimony of this witness as to statements of Salvador and Josefa made to him concerning the other ancestors of Salvador and Josefa, running the genealogy back to Jose de Leyba on the same ground, and on the further ground that their testimony as to — Jose de Leyba was, and who his son in turn was, was necessarily hearsay in the person from whom this person heard it. The witness has testified he was born in 1839. It is safe to say he could not have heard of these things to recollect them before 1850. The grant in this case was made in 1728. Some of the other instruments in 1783. From 75 to 100 years prior to the time when the witness heard these statements made; consequently the persons who made the statements to him must have necessarily stated to him things told by others; they could not necessarily lie in their own personal knowledge. On that ground that they were necessarily testifying to hearsay, and on the further ground that they still have not been connected to the Leyba family excepting by their own statements, we ask that that testimony be taken from the jury and stricken out.

Objection and motion overruled by the court.
Exception reserved by defendant's counsel.

The COURT to witness:

Q. Do you know when Salvador Antonio Leyba died?
A. No, sir; I do not know.

Mr. CLANCY:

Q. At this point I will now offer in evidence the record in the county records of a deed bearing date March 24th, 1836, made before an alcalde of Santa Fe, by Juan Angel Leyba to Jose Antonio Romero, of which we will have a copy and translation made and present it with the other papers to be marked Plaintiff's Exhibit J.

The COURT:

Q. Who was Ynez Apodaca the mother of?
A. Salvador Leyba.

Mr. CLANCY:

Q. Do you mean the Salvador who died a few years ago?
73 A. Yes, sir.

Q. Have you any knowledge or did you ever hear the members of the family say as to whether the father and mother of Salvador Leyba had been married?

A. Yes, sir.

Q. Who told you that they had been married?

A. Ynez Apodaca told me so herself, and Josefa Leyba who was her sister-in-law, they told me that when they became a part of my family.

Mr. DAVIS: I desire to object to this last deed Exhibit J. I desire to object to it because it is not signed by Juan Angel Leyba, but by Augustin Duran who is cited as being second constitutional alcalde, and by five other persons as attending witnesses, etc., and it is not signed by the grantor.

The COURT: It is only notice—not to show the transfer of property, but to show about the time of the death of Salvador.

Mr. DAVIS: I further object on the ground that the official character of Augustin Duran, by whom the instrument is signed, is not proven.

Mr. CLANCY: I would not undertake to prove that 70 years afterwards. I don't think it is necessary.

Objection overruled by the court.

Exception reserved by defendant's counsel.

Mr. DAVIS: I would like to have my motion made broad enough to include the few sentences of testimony he gave after I made the motion.

Mr. CLANCY: It may be understood to go as to all his testimony.

(EXHIBIT J.)

Deed from Juan A. Leyba to Jose A. Romero.

Fourth Seal.

[SEAL.]

One Quartilla.

For the years one thousand eight hundred and thirty-six and eight hundred and thirty-seven.

In the city of Santa Fe, capital of the Territory of New Mexico, on the 24th day of the month of March, one thousand eight hundred and thirty-six, before me Don Agustin Duran, second constitutional alcalde of this city, personally appeared Juan Angel Leyba and Jose Antonio Romero, both residents of this jurisdiction, and the first said that, representing the persons of his sisters, Juana and

74 Josefa Leyba, and Rafael Gutierrez, both heirs of Salvador Leyba, deceased, he would and in fact did sell, of his own

free will, to the said Romero, a piece of agricultural land measuring eighty-six varas in width and two hundred and fifty-four varas in length, which he sold for the price of forty-three dollars, which sum the grantor states to have received in goats and cash to his entire satisfaction, and that he does this with the just end of paying the funeral and burial expenses of his deceased father as his sole heirs, and that if said land is or should be worth more, of the excess he makes to the purchaser gift and donation, pure, simple, perfect, and irrevocable, which the law terms *inter vivos*, and that he gives and transfers in favor of the aforesaid purchaser all the right and seignory that he had in said land, in order that he may use it in the manner that he may choose, selling or alienating it as he may deem proper, in regard to which neither the grantors, their children, and heirs, nor the other successors, will institute any suit or claim whatsoever at any time, and in case they should bring it that they be not heard either in or out of court, and that in such a case the grantor binds himself and for the parties he represents to appear in defense until he leaves him in the quiet and peaceable possession thereof. For the execution and compliance of this deed he binds his person and present and future property, all subject to the laws in the matter. The boundaries of the land sold being on the east by lands of Pablo Aliri, on the west by the grantor, on the north by the aforesaid Aliri, and on the south by Juan Jose Lujan; all which he executed before me, the said constitutional alcalde, asking me to interpose my authority and judicial decree, and I, the said alcalde, stated that I would and did interpose it insofar as is required by law and is authorized. In witness whereof he thus executed and signed it with me, and the instrumental witnesses, who were the citizens Domingo Fernandez, Santiago Armijo, and Gaspar Ortiz, being present and residents of this city, with those of my attendance, to which I certify.

AGUSTIN DURAN.

Instrumental: Santiago Armijo. Instrumental: Gaspar Ortiz.
Instrumental: Domingo Fernandez. Attending: Jorge Ramirez.
Attending: Nicolas Pino.

Cross-examination by Mr. M. G. REYNOLDS:

Q. Where did you reside in 1836?

A. I have always lived in Santa Fe.

Q. Where did you live in 1839. In Santa Fe?

75 A. I was born in that year.

Q. Born in 1839?

A. Yes, sir.

Q. What year did you have this conversation with Josefa Leyba, which you have testified to?

A. It must have been about the year 1860, and part of 1861.

Q. What was the occasion for the conversation. How did you happen to talk to her in 1860 and 1861 about it?

A. I remember they were talking about Salvador, their nephew, having interests in the grant.

Q. And that was in 1860?

A. Yes, sir.

Q. How did you happen to be talking with them in 1860 about it?

A. I was present when Salvador married my sister-in-law, Juana Alarid.

Q. When did that marriage take place?

A. It took place in February of 1860.

Q. When did Salvador die?

A. I am not quite sure, but he died in 1896 or 1897.

Q. How old was Salvador Leyba when he was married?

A. I don't know what age he had.

Q. Did you know his mother?

A. I knew her.

Q. What was her name?

A. Ynez (Inez) Apodaca.

Q. Who was his grandfather?

A. Salvador Antonio Leyba.

Q. Who was his great-grandfather?

A. I don't know.

Q. Who was his father?

A. Juan Angel Leyba.

Q. When was the last time you were down on this grant?

A. I was there in the years 1865 and 1866.

Q. And you haven't been down there since?

A. I have not been there since.

Q. Do you know where the road leading to Galisteo is located?

A. Yes, sir.

Q. What is the general direction going from Santa Fe?

A. The general direction is south of Santa Fe.

76 Q. What is the direction of the Penasco Blanco from the house of Nasario Gonzales.

A. To the north.

Q. How far?

A. About a mile and a quarter or a little more.

Q. Do you know where the Cerrillos grant is located?

A. The grant of Cerrillos?

Q. I am talking about the Old grant, if you know anything about it.

A. I know it is where the house of the deceased Don Manuel Delgado was. I knew that place as the old Cerrillos.

Q. How close to that tract does the Galisteo road run?

A. About 10 or 15 miles.

Q. Was there a road leading from Cienega, the pueblo, down to the Galisteo?

A. I know that there is a road there.

Q. Going down towards Galisteo?

A. Yes, sir.

Q. Does that run on the east side or west side of the Cerrillos Grant, the Old Grant?

A. Between south and east.

Q. Well, is it to the east of the Cerrillos Grant, on the east side of it?

A. To the east of the grant of Cerrillos.

Q. Was that road an old road when you first knew it?

A. It was an old road. I do not know how old it is.

Q. You say you know where the turquoise mines are located?

A. Yes, I have been told where they are—I have not been right at the place myself. I have seen them from the road.

Q. What road?

A. That road that goes to Cerrillos.

Q. When did you see them—what year?

A. I saw them about three years ago when I was going to Cerrillos. I was going to see Doctor Palmer.

Q. What road to Cerrillos, the road from Pecos to Cerrillos, you are talking about?

A. No, I do not mean that road.

Q. Well, what road to Cerrillos, from where?

A. It comes from Cerrillos and goes through a place called Carbonateville.

77 Q. Which side of the mines does that road run? East or west of them?

A. It is on the west from the mines.

Q. When was the last time you were at Coyote Spring?

A. At that same time.

Q. When was the last time that you was at Coyote Spring?

A. As I said before, my testimony must be down there. I don't remember exactly, but it was in the year 1860 or 1861. I am not very certain about that.

Q. Do you know the location of the road from Sante Fe to San Marcos?

A. Yes, sir.

Q. How long have you know- that?

A. I knew that road since I was very young. I don't know exactly how old I was.

Q. What arroyo do you say the Coyote Spring is situated in?

A. In the Arroyo known as the "Arroyo del Oregano."

Q. Is there an arroyo down there known as the Arroyo de la Piedra?

A. There is an arroyo there by that name.

Q. Is it the same?

A. It connects with the arroyo de la Piedra. About the distance of 200 yards more or less.

Q. It is one and the same arroyo is it not?

A. It becomes the same arroyo.

Q. What other arroyo down there do you know?

A. I know the arroyo of San Marcos.

Q. Where is that located with reference to Coyote Spring.

A. It lies to the south of the Ojo de- Coyote.

Q. What other arroyo is located near to the Coyote Spring—close to it?

A. I only remember the one that comes from the Canada de las Gallinas and connects with the arroyo del Oregano.

Q. What direction does that come from?

A. It comes from the east or northeast.

Q. How far is the San Marcos Spring from the Coyote Spring?

A. About 150 yars, maybe more.

Q. From the Coyote Spring to the San Marcos Spring?

A. Yes, sir; maybe more.

Q. Maybe how much more?

78 A. I don't know. It maybe more than 150 yards.

Q. Do you know where the "Pino's Ranch" is located?

A. Yes, sir.

Q. When were you there last?

A. I was there three years ago when I passed going to Cerrillos.

Q. Is Pino's Ranch situated in the Sitio de Juana Lopez Grant?

A. I don't know. I was not right at the ranch. I stopped there at the "Vega" right on the road that goes to Cerrillos by Bonanza.

Re-direct examination by Mr. F. W. CLANCY.

Q. Where did the Doctor Palmer live you spoke of?

A. He lives at Cerrillos, right on the railroad.

Q. And that is the place to which you were going three years ago then?

A. Yes, sir.

BRIGIDO GABALDON SWORN.

Direct-examination by F. W. CLANCY:

Q. State your name?

A. Brigido Gabaldon.

Q. Where do you reside?

A. I live in Santa Fe.

Q. How old are you?

A. I am about 69 years of age.

Q. Do you know a spring called the Ojo del Coyote?

A. I knew it.

Q. About when did you first know that place or first see it?

A. I am not quite sure, but it is about fifty-three years ago.

Q. How often have you seen that spring? Have you seen it often or only once?

A. Not since that time.

Q. How is that spring situated on the ground?

A. I did not take very particular notice of it.

Q. Is it on top of a hill or in a valley?

A. It is in the edge of an arroyo.

Q. When you saw that spring, did you hear what the name of the arroyo was?

A. Yes, sir; the Arroyo de Oregano.

Q. Did you see at or near the spring any signs of habitations or houses?

79 A. Yes, I saw ruins there.

Q. What sort of ruins?

A. I saw some adobe walls.

Q. About how high were they?

A. I could not swear well how high they were.

Q. Did you see anything else in the way of ruins or is that all?

A. No, sir.

Q. Now was this arroyo a deep arroyo, with a hill on each side?

A. Yes, sir; there were hills on two sides.

Q. Have you ever lived out there anywhere in that country, southwest of Santa Fe?

A. I worked some at Juana Lopez.

Q. For whom did you work there?

A. For Don Nicolas Pino.

Q. How far is that from Coyote Spring?

A. What?

Q. Juana Lopez?

A. I don't know; it is not far.

Q. In which direction is Juana Lopez from the Coyote Spring?

A. Juana Lopez is on the side the sun sets and Ojo Coyote is on the side the sun rises

Cross-examination by M. G. REYNOLDS.

Q. You say there were some ruins near the spring?

A. Yes, sir.

Q. Do you know who originally put that house there?

A. No sir; I do not.

Q. Did you ever know a man named Jesus Narvais?

A. I don't remember.

Q. Did you know Nasario Gonzales in his life time?

A. Yes, sir.

Q. Where did he live during his life time?

A. He lived at the place called "Guieu."

Q. How long since were you down in that country?

A. Where, do you mean?

Q. Around the Coyote Spring, you have been testifying about?

A. I was not a very much time at the place, but I was at Juana Lopez working for Pino for sometime.

Q. When?

80 A. At the time he was building a house there.

Q. How old are you?

A. Sixty-nine years old.

Q. How old were you when you were working down there for Pino?

A. I must have been about 10 or 12 years of age.

Q. That is about 59 years ago then, or 57 years ago?

No answer.

Q. When you were down there was there any timber on woods down there around the Coyote Springs?

A. Not at the house, but a little distance from the house there was some.

Q. What kind?

A. There was cedar and piñon timber.

Q. Was there much down in that country?

A. I don't know how much there is now.

Q. Was there then?

A. There was a great deal of it at that time.

Q. What direction is Juana Lopez from the Coyote Spring?

A. I have already said that Juana Lopez is to the west and Ojo Coyote is to the east.

Q. Is the Juana Lopez directly west from the Coyote Spring?

A. I don't know whether it is on a direct line, but it is in that direction. On that side.

Redirect examination by Mr. F. W. CLANCY:

Q. When you went to the Coyote Spring what were you doing there?

A. I was working for Nicolas Pino, and he used to send me there to fetch wood.

Q. What directions or orders did he give you on that subject?

A. He did not give me any orders, he just told me to go after wood.

Q. Did he tell you where to get it?

A. No, sir.

Q. Did he tell you where not to get it?

A. He did not tell me that either.

Q. Did you go after wood alone?

A. I went with others.

Q. Did you hear him give any orders to the others then?

81 A. No, sir; I did not.

Adjourned to Tuesday, August 29th, 1905, at 9:30 a. m.

TUESDAY, Aug. 29, 1905.

Morning Session.

Father ANTONIO FORCHEGU, (Priest) sworn.

Direct examination by Mr. F. W. CLANCY:

Q. What is your name?

A. Antonio Forchegu.

Q. What is you occupation?

A. I am Vicar of the Catholic Church in Santa Fe.

Q. As such, have you in your charge the records of marriages, and baptisms, etc.?

A. I have.

Q. Have you brought here the record of marriages in the years 1859-60?

A. I have.

Q. Will you produce the record?

A. This is the book—(handing book to counsel).

Q. Father Antonio, I want you to point out the record of the marriage of Salvador Leyba, in that book?

A. Here it is (pointing out record of same to counsel and court and jury).

Mr. CLANCY: I offer that entry in evidence, of which we have a copy here marked Plaintiff's Exhibit K, and is as follows:

(Translation.)

Year 1860.

This third day of February, after the performance of the Christian duties, I joined in matrimony acting according to the orders of our Holy Church, Salvador Leyva of the real de Dolores, unmarried, legitimate son of Juan Angel Leyva deceased, and Maria Ines Apodaca, with Maria Juanna Alari of Santa Fe, unmarried legitimate daughter of Jose Alari, deceased, and Margarito Lopez, deceased.

Witnesses: Maximiano Ribera and Marcelino Lopez.

P. EGUILLOON, Cure.

(WITNESS:) In the book, the name is written "Joanna," the way that name is written in Spanish is "Juana."

Cross-examination by M. G. REYNOLDS:

Q. Did you notice the spelling of the name "Leyba" in the record of the marriage? How is that name spelled?

A. In the book here?

Q. Yes, the word "Leyba"—how is it spelled in the book?

A. L-e-y-v-a. They write it either way, with a "b" or a "v." We have it in the books with a "b" and with a "v." It does not make any difference with us.

Mr. REYNOLDS: We will admit this Exhibit K is a correct copy of the record in the book, and substantially a correct translation, so you can take the book with you.

LUIS CONSTANTE, SWORN.

Direct examination by F. W. CLANCY:

Q. What is your name?

A. Luis Constante.

Q. Where do you live?

A. Here in Santa Fe.

Q. How long have you lived in Santa Fe?

A. Since I was born, fifty-three years.

Q. Were you ever acquainted with a woman named Apolonia Leyba?

A. Yes, sir.

Q. Is she living or dead?

A. She is dead?

Q. How long ago did she die?

A. I think she died in 1887.

Q. Was there any administration upon her estate?

A. Yes, sir.

Q. Do you know who the administrators were?

A. My father and myself.

Q. Will you examine this paper and state whether you have ever seen it before?

A. Yes, I believe I know that paper.

Q. Have you ever had it in your possession at any time?

A. Yes, sir.

Q. How did it come into your possession?

A. As administrator of the estate.

Q. That is of the estate we were just speaking of?

A. Yes, sir.

Q. Do you know who the mother of Apolonia Leyba was?

A. I heard her name as Josefa Leyba.

Q. From whom did you hear her name was Josefa Leyba?

83 A. I heard it from her own daughter.

Q. You mean Apolonia, for whom you were administrator?

A. Yes, sir.

Q. Where did you find this paper?

A. It was in one of the trunks of Dona Apolonia Leyba.

Mr. CLANCY: I will offer this paper in evidence, and I will say that this is the original of the Will the record of which was offered in evidence yesterday as plaintiff's Exhibit H, to which reference is now made as being a copy and translation of this original will. It is the Will of 1836. It is the Will of Salvador Antonio Leyba.

(Translation.)

Seal fourth.

(Seal.)

One cuartilla.

For the Years One Thousand Eight Hundred and Thirty-six and
Eight Hundred and Thirty-seven.

In the name of Almighty God, and of the Ever Virgin Mary,
Our Lady, conceived without original sin. Amen.

Be it known by all who may see this my testament that I, Salvador Leyba, being sick by the will of Almighty God, but in my complete and sound understanding, make and order this my testament which is my will, in the following manner: First, I state that I believe in and confess the mystery of the Most Holy Trinity, Father, Son, and Holy Ghost, three distinct persons and only one true God. I believe in all that Our Holy Mother, the Church, believes and confesses, and in this faith and belief I desire to live and die whenever it shall please God, in expectation of which I order this my testament in the following form:

First. I commend my soul to the Lord, who created and redeemed it with the price of His Most Holy Blood, and my body to the earth from which it was made, which it is my will shall be shrouded as my children may determine, and that it be buried in the cemetery of this city, and that my burial be a humble one.

Item. I order that there be given to obligatory bequests two dollars.

Item. I declare to have been married and blessed in first marriage with Maria Francisca Antonia Lobato, deceased for forty-nine years, during which time we had the following children: Maria Manuela, Juana, Josefa, and Juan Angel, whom I recognize as my legitimate children a-d heirs.

84 Item. I declare as my property the house of my residence composed of four rooms, a parlor and three rooms, and its furniture, which consists of three chests, two good ones and an old one; two blankets, two pillows, four religious paper stamps, one wooden crucifix, three hoes, a large and two small ones, one axe.

Item. I declare to own a small orchard with fruit-bearing trees in a small piece of land contiguous to the house of my residence.

Item. I declare to own a piece of agricultural land, which is located near the Tenorios, as appears by the documents.

Item. I declare to own another ranch at the Llano de los Lobatos, as appears by its deeds.

Item. I declare to have at Santo Domingo in the possession of my grandson, Antonio Jose, an Indian of said Pueblo, twelve breeding goats.

Item. I declare that all that has been set forth constitutes everything that I recognize as my property.

Item. I declare that I do not owe anyone a single dime.

Item. I declare that Juan Cruz Aragon owes me twenty-four dollars, which will be proven by the witness, a son of Juan Cristobal Sanchez. I order my heirs to collect them. Isidro de Lona also

owes me eleven dollars, balance for a lot which I sold him, on which he paid me on account seven dollars. Don Dolores Madrid owes me one fanega of wheat. Don Perfecto Salazar, two cows. Buslometro Baldes, of the State of Sonora, owes ten dollars two reals in cash.

Item. I declare as my property two razors.

Item. I order that the house of my residence after my death be left to my two daughters, Juana and Maria Josefa, leaving to my two sons the two corrals and the old house lot, in order that they may build upon it.

Item. The heirs of Jose Maria Paez owe ten dollars and two reals, balance for a lot of twenty-four varas, at one dollar a vara, and I received from the deceased thirteen dollars six reals, which shall go into the mass of my property.

Item. I order that all that is recognized as my property, outside of what is set apart for my daughters, be divided in equal parts among my four sons and legitimate heirs.

Item. I declare that I have never made any other will, and therefore it is my will that all the necessary force be given to this one.

85 Item. It is my will that my executors be, in the first place, Don Juan Ortiz; in the second, Don Eugenio Sanchez, and in the third, Don Justo Pino, to whom I request and ask to comply and execute all that is set forth in my last testamentary disposition. And in order that this will may have all the necessary validity and force, I have caused to appear and asked the Sir 1st Alcalde of this city of Santa Fe, Don Gregorio Sanchez, to interpose his authority, and I, the present judge, stated that I would and did interpose my authority, being witnesses to the making of said will the citizens Esquipula Pacheco, Pomoseno Apodaca, and Miguel de Lona, who signed with me, the said judge, and the attending witnesses, according to law, to which I certify at Santa Fe on the 12th day of March, 1836.

SALBADOR LEYBA.

GREGORIO SANCHES.

Witness:

ESQUIPULA PACHECO.

Witness:

MIGUEL DE LONA.
NEPOMOSENKO APODACA.

Attending witness:

FRANCISCO ARCHIBEQUE.

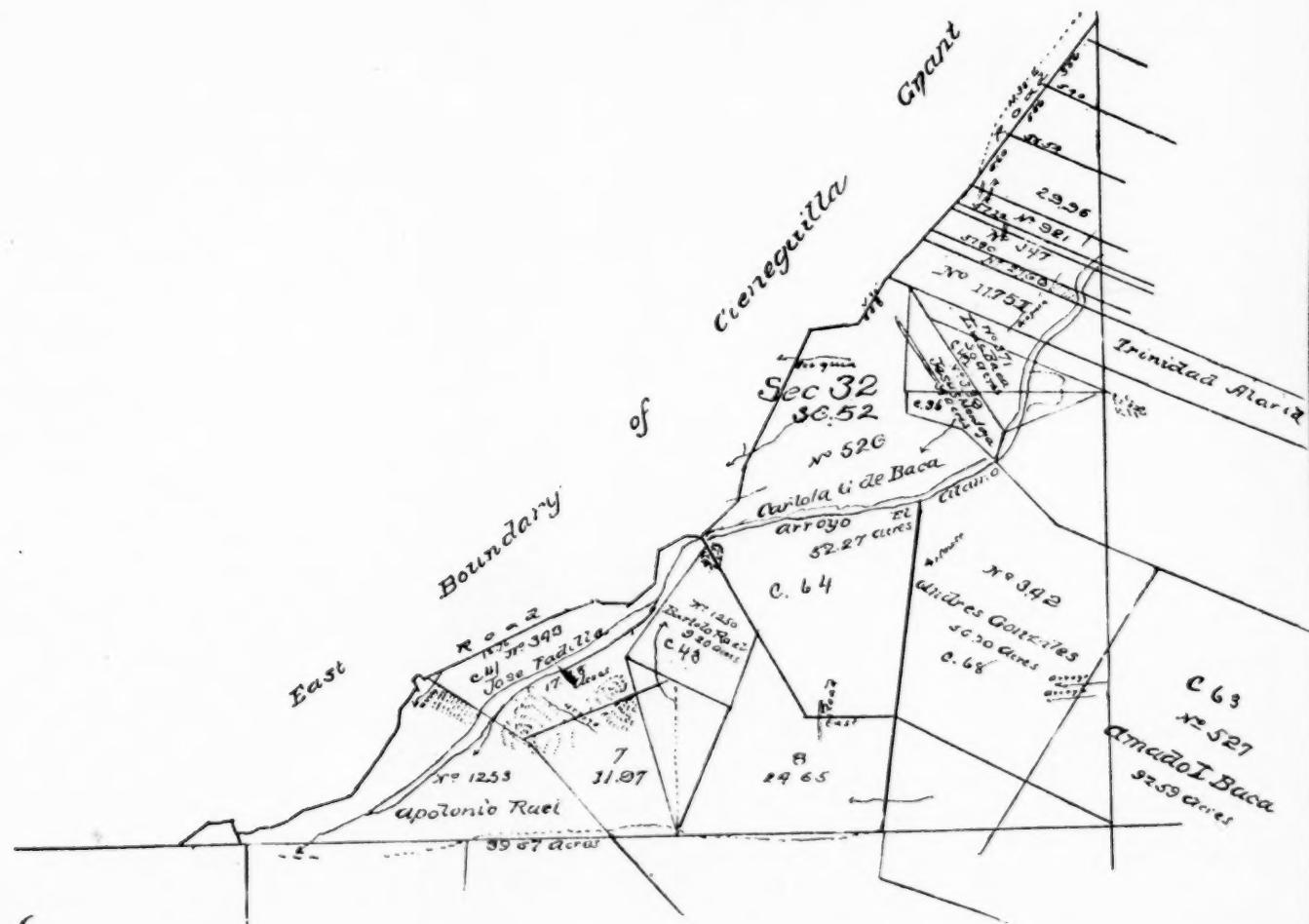
Attending witness:

JORGE RAMIREZ.

Plan showing Small Holding Claims

Sects 28, 31, 37 & 33 T. 16 N R. 8 E

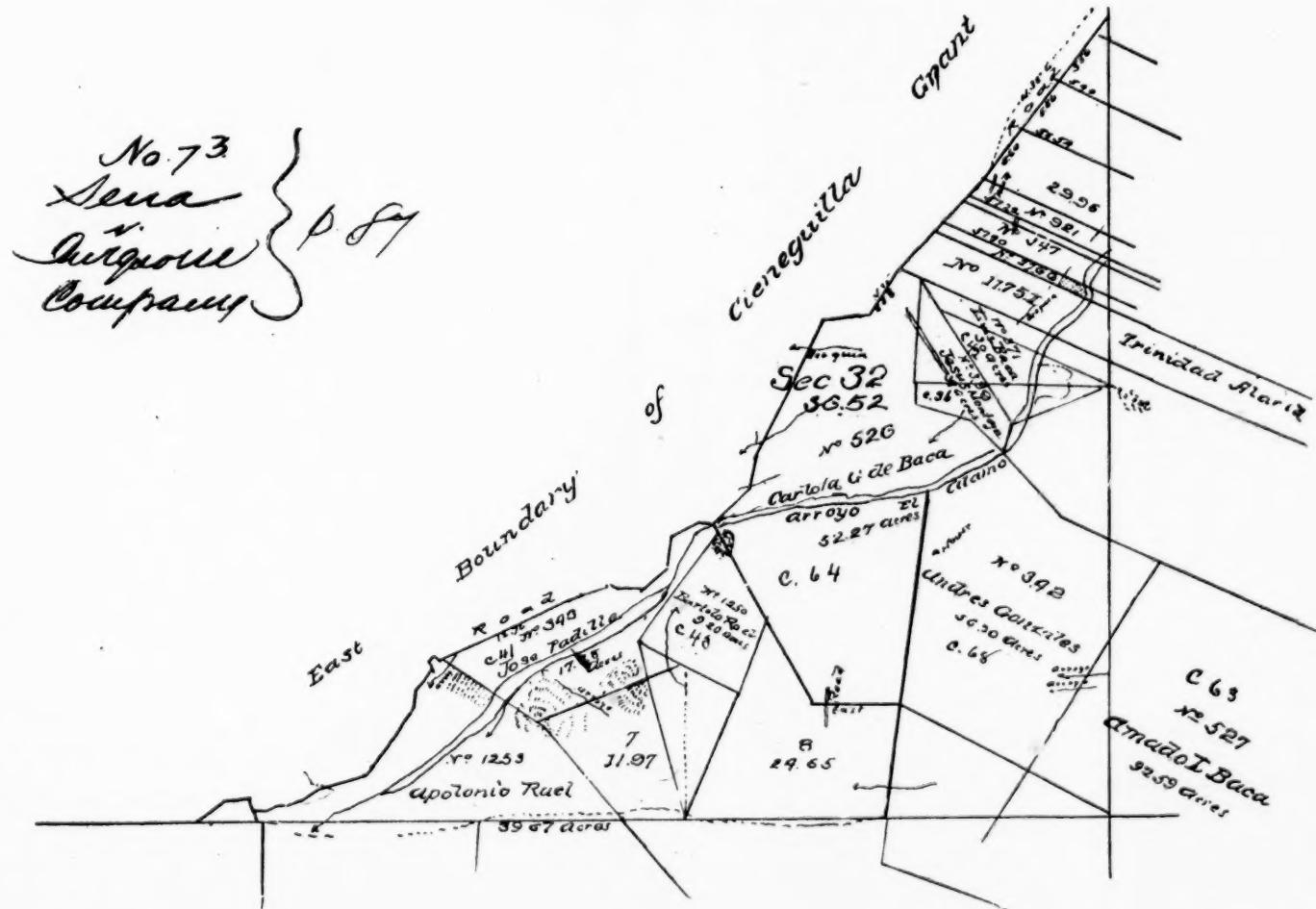
Surveyor General
C. G. S. Office
Montana - E. Date 21-1895



No. 73.
Sena }
Turquoise } p. 86
Company }

Plat showing Small Holding Claims
Sects 28,31,37 & 33 T.16 N R.8 E

Sheriff Court Tax
C. G. S. Police
Date 21 Dec 1895



FREDERICK MULLER, SWORN.

Direct examination by Mr. F. W. CLANCY:

Q. What is your name?

A. Frederick Muller.

Q. What, if any position do you occupy?

A. Receiver of the United States Land Office.

Q. Is there on file in the land office any plats showing surveys of lands in the vicinity of La Cienega, about fifteen miles from Santa Fe?

A. Yes, there has been an official survey.

Q. Have you brought those plats with you?

A. Yes, sir; I have. Township 15 north, Range 8 east, and Township 16 north, Range 8 east.

Mr. CLANCY: This is a plat showing small holdings and claims in Sections 28, 31, 32 and 33, Tp. 16 north, Range — east, and in Sections 4 and 5, Tp. 15 north, Range 8 east, surveyed by John H. Walker, in 1894.

ANDRES C. DE BACA, recalled.

Direct examination by F. W. CLANCY.

Q. You stated yesterday that you knew the location of the
88 Penasco Blanco de los Golondrinas?

A. Yes, sir.

Q. Do you know upon whose land or near whose land that natural object is?

A. Most of the Penasco Blanco de los Golondrinas must be on the land of Carlota Gonzales de Baca, and part of it on the land of Bartolo Rael.

Q. Can you point out on that plat lying on the table the places where the Penasco Blanco is?

A. To the best of my knowledge this must be the Penasco Blanco de los Golondrinas. This is the land of Bartolo Rael (pointing same out on plat lying on table in front of judge and jury). (Witness) And this is the land of Carlota Gonzales de Baca.

Mr. CLANCY: The witness pointing to a point drawn on the map as apparently a little hill which is near the north corner of the land of Bartolo Rael, and on the line between that and an adjoining piece of land, the same being the land of Carlota Gonzales de Baca, the same being in Section 32, Tp. 16 north, Range 8 east.

Mr. CLANCY: I offer this plat in evidence. This is the plat identified by Mr. Muller—and we will furnish a copy for the record hereafter.

The plat was marked Plaintiff's Exhibit L.

(Here follow maps marked pp. 86 & 87.)

EXHIBIT L.

Cross-examination by Mr. REYNOLDS:

Q. Did you ever see this plat before this morning?

A. Yes, I saw it before.

Q. When did you examine it before?

A. I examined it about a quarter to nine o'clock this morning.

Q. You located the Penasco Blanco without any trouble on it?

A. Yes, sir.

Q. By what method of reasoning or how did you happen to locate that particular point as the Penasco Blanco, with reference to the balance of this property, no name being mentioned on it?

A. I am well acquainted with all of the land all around there.

Q. Does this plat show the lay of the land?

89 A. Yes, sir.

Q. It does?

A. To the best of my knowledge, it does.

Q. Well, there is another peak or elevation shown on this map. I wish you would tell me what it is. You say you understand the lay of the land, etc.,—that is this point here. (Pointing to place at southwest corner of the claim No. 342.)

A. That must be a small hill that is on the south line of the lands of Andres Gonzales.

Q. What is its name?

A. We call the place all around there Los Golondrinas.

Q. That is the name of the place generally?

A. Yes, all that place around there.

Mr. CLANCY: Has that particular hill any particular name?

A. It is a hill on the boundary of the land of Andres Gonzales.

Mr. REYNOLDS:

Q. Can you tell me in what section and township the hill that you call the Penasco Blanco is located under the government survey?

A. Section 32, I think.

Q. Well, do you know?

A. (Looking at plat:) Yes, it is in Section 32.

Q. Now in what part of the section, middle, northern, southern, eastern or western portion of it?

A. (Looking at plat:) It must me about the middle more or less. About the middle of Section 32 more or less.

Q. Is Section 32 laid down on that map?

A. Part of it is I think. This is the line of Section 32.

Q. Well, is that hill of Penasco Blanco located on the small holding or claim of any one, and if so, who?

A. Part of it is in the small holding claim of Carlota Gonzales de Baca, and I think there is a small holding and claim Bartolo Rael, as I understand the lines there.

Q. Are you familiar with the public surveys down there, the section lines and sections?

A. Not very much, but some of it.

Q. You know it in a general way?

A. Yes, in a general way I can tell something about it, but I know every piece of land and to whom it belongs.

Q. You have been familiarizing yourself with the land
90 down there, the location, of natural objects with reference to the lines of these land grants?

A. Yes, sir.

Q. You have been doing that haven't you recently?

A. Yes, sir.

Q. Have you been familiarizing yourself with the lines of public surveys with reference to these objects?

A. I am, not very familiar with the lines of the public surveys.

Q. Aren't there section corners down there?

A. I can tell two section corners down there. I can show two of them, but not all of them.

Q. What sections are they?

A. Section 5, Township 15.

Q. Which corner?

A. I can show the southwestern corner of that section.

Q. The southwestern corner of Section 5, Tp. 15, Range 8 east?

A. Yes, sir.

Q. You know where that is—that is there is it?

A. Yes, sir.

Q. What corner is it?

A. Southwest.

Q. How far is that from the Penasco Blanco?

A. It must be to the best of my knowledge about a mile from the Penasco Blanco, more or less.

Q. Do you know the lines and corners of the Cerrillos grant?

A. No, I have not seen the corners of the Cerrillos grant.

Q. Do you know its location?

A. Yes, I know the land.

Q. Does it come up to Section 5, the north end of it?

A. I don't think it does.

Q. How near to it?

A. It must be about a half a mile, more or less.

Q. Do you remember when that was surveyed the last time?

A. No, sir.

Q. Do you know the Canada del Guieu?

A. Yes, sir.

Q. And the lands of the Bacas?

A. Yes, sir.

91 Q. Where are they located with reference to Section 5 and Section 32?

A. Canada del Guieu is in Section 5, Tp. 15 north, Range — east.

Q. How near the south line of Section 5?

A. From the creek to the south line of the Canada del Guieu it must be about a half a mile more or less.

Q. Do you know the length of a section—how long it is across each way?

A. A mile, is it not?

Q. Yes, just a mile. Do you know where Cerrillos Peak is?

A. Yes, sir.

Q. What section is that in?

A. I don't know as I can tell that.

Q. Do you know where the Delgado ranch is?

A. Yes, sir.

Q. Is that in the Cerrillos grant?

A. Yes, sir.

Q. Do you know whether the Cerrilos Peak is in the Cerrilos grant?

A. I think it is.

Q. Do you know whether Bonanza is in the Cerrilos grant or not?

A. It is.

Q. Do you know whether Los Cerrilos is in the Cerrilos grant or not?

A. That is the same as I know as the Delgado ranch—it must be in the Cerrilos grant.

Q. Is Los Cerrilos in the Cerrilos grant?

A. I don't know whether Los Cerrilos is in the Cerrilos grant.

Q. What direction is Los Cerrilos from Bonanza?

A. Well, that is the same place.

Q. I don't mean the whole grant, I mean the place called Los Cerrilos—what direction is that from Bonanza?

A. Bonanza is in the Cerrilos grant.

Q. What direction is the settlement of Cerrilos from Bonanza?

A. The settlement of Los Cerrilos is what they call Bonanza—the houses that are on the eastern part of the Cerrilos grant.

92 Q. In what section is Bonanza?

A. I don't know.

Q. Do you know anything about Section 8?

A. No, sir.

Q. Do you know anything about Section 9, or Section 4?

A. No, sir.

Q. Know anything about Section 16?

A. No, sir.

Q. Section 17?

A. No, sir.

Q. Section 21?

A. No, sir.

Q. In other words, you don't know anything about sections of land in Township 15, Range 8 east, except No. 5, about which you have testified, the southwest section corner?

A. I know that because I own land in that section.

Q. You own land in Section 5?

A. Yes, and in Section 6 also.

Q. Section 6 is located near the Church of La Cienega?

A. The new church of La Cienega is in Section 5.

Q. I am speaking of the church of La Cienega and the lands of La Cienega—they are located in Section 5 and 6.

A. In Section- 5 and 6. The church is in Section 5 near to the line between Sections 5 and 6.

Q. The church is not in Section 6 or 5 either?

A. Yes, it is in Section 5.

Q. The Old Church?

A. No, sir; not the old church—it is west of Section 5.

Q. It is not just west of the north and south line of Section 6?

A. The old church is west of Section 6, in another township.

Q. I show you a plat of the Cerrillos grant, which is an approved plat under the confirmation of the court of private land claims, of the Los Cerrillos grant, and I ask you if the location of that north line of this plat is substantially correct with reference to the south line of Section 5? (Showing witness a plat fastened in a book looking like a law book.)

A. It seems to be.

Q. Look at this map and see if what is known as the Los 93 Cerrillos Peak is about correctly located (showing witness a map in the book)?

A. Do you mean the peak that is alone on the west or the other peak that is to the east?

Q. I don't know about that. There is laid down on that map a survey and approved by the court of private land claims—an object known as the Cerrillos Peak.

A. Yes, this we know as the Cerrillos Peak, and these are the hills running from it, called the "Cerrillos A—(?)

Q. Now that plat, according to your information, is in general conformity with the conditions in the country and the topography or location of the hills and streams and ranches on it, as put down by the surveyor, are substantially correct (referring to map in book)?

A. Yes, they seem to be.

Q. Do you know a place down in that country called the Turquoise Peak?

A. Yes, sir.

Q. Where is that located?

A. That is south of Bonanza, I think a little east of south of Bonanza.

Q. How long have you known the Turquoise Peak?

A. I have known that place since 1869.

Q. Do you know whether or not the general location as related on this Los Cerrillos grant and the Turquoise Peak, are substantially correct, approximately and relatively?

A. I think they are.

Q. Has that any other name or Spanish name? Do you know it down there in that country by any Spanish name which means Turquoise?

A. I knew it before by the name of "El Cerro Chalehaguite."

Q. That is Spanish for Turquoise?

A. That is the Indian name.

Q. You have known the Peak since 1869?

A. Yes, sir.

Redirect examination by Mr. CLANCY:

Q. In which section down there do you live?
 A. My house is in Section 6, near the line of Section 5.
 Q. How long have you lived in that place?
 A. I have lived in the new house since 1890.

94 It is here stipulated and agreed by counsel that all of Section 32, as shown on that map may be made by Mr. Frederick Muller, instead of making the entire plat.

FELIPE PINO SWORN.

Direct examination by Mr. F. W. CLANCY:

Q. Examine this paper and state whether you have ever seen it before, and state whether it has ever been in your possession?

A. Yes, I have had it.

Q. How did it come into your possession?

A. That paper came into my possession when my sister-in-law died at Rael de Dolores. She went there to have a child, and the papers remained at my house, the papers which belonged to herself and to her husband. A long time afterwards, looking over her business, I saw that paper, and I told my wife—Here is a paper which my father made of the obligation which was made by Josefa Leyba, placing to her certain lands. That is what the paper said, and that is the way it remained in my power or under my control.

Q. You spoke of your sister-in-law and her husband, what were their names?

A. Juanita Alarid and Salvador Leyba, her husband.

Q. Do you know the handwriting in which this paper is made?

A. Yes, sir.

Q. In whose handwriting is it written?

A. It was written by my father.

Q. What was your father's name?

A. Jose M. Pino.

Mr. CLANCY: I offer this paper in evidence, of which we present a copy and translation, marked Plaintiff's Exhibit M.

(Translation.)

TERRITORY OF NEW MEXICO,
 SANTA FE, March 7, 1855.

I, Josefa Leiva, declare that I promise Don Jose Pino to pay the sum and quantity to me delivered which are forty dollars which he has loaned me upon the pledge of the grant of the Collote Spring belonging to Salvator Leiva, my nephew, inheritance of my nephew from Juan Angel Leiva his father for the term of three months with interest of one real on each dollar, and if at this time 95 through any cause I fail to pay said sum the said mortgaged grant shall belong to the said Senor Pino. For its validity I have signed this before two witnesses.

JOSEFA LEIBA X

TOMAS ENSINAS X
 MIGL. ARCHULETA X

Mr. DAVIS: We object to the instrument on the ground the execution of it is not proven, and secondly, in so far as it is attempted to show by this instrument that the grant at this time belonged to Salvador Leyba, that it is incompetent, immaterial and not the proper way to prove any such fact. The instrument is not acknowledged and all the witnesses sign by a mark, and there is no proof of its execution.

The COURT (looking at the document): I don't see that this proves anything.

Mr. CLANCY: The manifest object of this is to still further identify Josefa and Salvador Leyba with this property and with this grant. It does not show ownership, but it identifies these people.

The COURT: I think you have got them pretty well identified. I don't think I will admit this exhibit.

Mr. CLANCY: Will Your Honor note our *first exception?*

Mr. CLANCY:

Q. I will ask you to examine these pieces of paper and state whether you have ever seen them before or had them in your possession (handing witness some old pieces of paper).

A. No, sir.

Q. Did you ever see those papers before?

A. I have seen them, but I never had them in my possession.

Q. When and where did you see them?

A. I don't remember when I saw them, but I saw them here in Santa Fe.

Q. In whose possession were they when you saw them?

A. I saw them in the possession of Andres Baca.

Q. This Andres Baca who has testified here?

A. Yes, sir.

Q. How long ago was that?

A. I don't remember.

Q. Was it a long time ago or was it yesterday?

A. Not very long ago.

Q. Within this year?

A. I saw them this year.

Q. You never saw them before this year?

96 A. No, sir.

Q. When you saw these papers, did you do anything with them, or have anything to do with them?

A. No, sir.

Q. Do you know a woman named Juana Baca?

A. I knew her. She is dead now.

Q. How long ago did she die?

A. On the 25th of August, a year ago.

Q. Did you ever examine or see any papers that belonged to Juana Baca?

A. Yes, sir.

Q. When was that?

A. About a year or two before she died.

Q. Did you ever know of a man named Francisco Tenorio?

A. No, sir.

Q. Did you ever hear of him, or know who he was?

A. Yes, I knew who he was.

Q. Where did he live?

A. He lived here in Santa Fe, but I don't know the place.

Q. Now I will ask you to examine these pieces of paper again and say whether when you said they were in the possession of Andres Baca, whether you were not confusing them with some other papers?

A. (Witness here took the papers and looked at them for some time.) I believe I brought these from some papers myself, but I do not understand writing very well. I understand and I believe I found these papers among the papers of this woman Juana Baca.

The COURT:

Q. You say you never saw them before this year?

A. I had seen them, but I don't understand writing well.

Mr. CLANCY:

Q. What did you do with the papers after they came to your hands?

A. I turned them over to Don Mariano Sena, thinking they might be of some use to him.

Q. Can you state positively one way or the other whether the papers which you delivered to Mariano Sena were papers which you had found among the effects of Juana Baca?

A. Yes, they are. I recollect that on account of the dilapidated condition of the spots on the paper.

97 The COURT:

Q. When did you deliver them to Mariano Sena?

A. More than a year ago.

Q. Why did you say awhile ago that you had never seen these papers until this year?

A. I did not remember until I noticed them well now.

The COURT: It seems to me anybody who ever saw that dilapidated paper would remember it.

Mr. CLANCY: A large number of these papers are in that condition.

Mr. CLANCY:

Q. Now was Juana Baca related in any way to the Tenorios?

A. I don't know.

Q. Do you know whether she was related to the Leybas?

A. I don't know a single word about that.

Mr. CLANCY: Unless I can identify Juana Baca more, I don't believe I can introduce this paper. I will see if I can get some information about that.

A recess was here taken by the court until two'o'clock p. m. Tuesday, August 29th, 1905.

Afternoon Session.—2 P. M.

Mr. CLANCY to Court: I now offer in evidence, deed from Salvador Leyba to Mariano Sena, the plaintiff herein, of which we present a copy to be marked Plaintiff's Exhibit N.

Mr. DAVIS: We make the formal objection to the instrument that the relationship of Salvador Leyba to the original grantee is not sufficiently proven, nor is there any proof at the time of the making of the deed, Salvador Leyba was the owner of the real estate involved in this case.

Objection overruled by the court.

Exception reserved by defendants' counsel.

Mr. Clancy here read to the court and jury, Plaintiff's Exhibit N.

This deed, made this sixteenth day of August, in the year of Our Lord, one thousand eight hundred and ninety-five, between Salvador Leiba, son of Juan Angel Leiba and Ines Apodaca of the County of Bernalillo and Territory of New Mexico, of the first part, and Mariano F. Sena of the County of Santa Fe and Territory of New Mexico, of the second part.

Witnesseth, that the said party of the first part, for and in

98 consideration of the sum of one dollar to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, conveyed and confirmed, and by these presents does grant, bargain, sell, convey and confirm unto said party of the second part, his heirs and assigns forever, all the following described lot or parcel of land, situate, lying and being in the county of Santa Fe and Territory of New Mexico, to-wit: All his right, title and interest, in and to that certain grant of land, made to Jose Leiba on the 25th day of May, A. D. 1728, by the then governor of the province of New Mexico, bounded as follows: On the east by the San Marcos road; on the south by an arroyo called Cuesta del Oregano; on the west by the lands of Juan Garcia de las Rivas; and on the north by lands of Sebastian de Vargas.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder or remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances.

To have and to hold the said premises above bargained and described, with the appurtenances unto the said party of the second part, his heirs and assigns forever. And the said Salvador Leiba, party of the first part, for his heirs, executors and administrators, does covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the sealing and delivery of these presents, he is well seized of the premises above conveyed, as of good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee-simple, and has good right, full power, and lawful authority to grant, bargain, sell and

convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, assessments and incumbrances of whatever kind or nature soever; and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming,
 99 or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

his
SALVADOR X LEYBA. [SEAL.]
mark

Signed, sealed and delivered in the presence of
MANUEL BACA Y CAMPOS.

TERRITORY OF NEW MEXICO,
County of Santa Fe, ss:

On this 16th day of August, 1895, before me personally appeared Salvador Leiba, son of Juan Angel Leiba and Ines Apodaca, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.] JOSE D. SENA,
Notary Public.

TERRITORY OF NEW MEXICO,
County of Santa Fe, ss:

In the Recorders' Office.

I, A. P. Hill, probate clerk and ex-officio recorder of said county, do hereby certify that the within instrument of writing was, on the 18th day of September, A. D. 1895, at 10 o'clock and 30 minutes a. m., duly filed for record in this office, and is recorded in the records of this office, in Book "C" 1, at page 114, the same day.

In witness whereof, I have hereunto set my hand and affixed my official seal at Santa Fe, N. M., this 18th day of September, A. D. 1895.

[SEAL.]

A. P. HILL,
Probate Clerk and ex-Officio Recorder
By JESUS MA. ORTIZ Y BACA, Deputy.

MANUEL BACA Y CAMPOS, sworn.

Direct examination by F. W. CLANCY:

Q. What is your name?
A. Manuel Baca y Campos.

Q. Where do you reside?

100 A. Santa Fe.

Q. Examine this paper which appears to be a deed from Salvador Leyba to Mariano Sena, and state whose signature appears there as a witness?

A. This is my own name as witness.

Q. Is that your signature—did you sign that as witness?

A. Yes, sir.

Q. Were you present at the time the deed was signed?

A. Yes, sir.

Q. Were you personally acquainted with the grantor in this deed, Salvador Leyba?

A. Yes, sir.

Q. Is he living or dead now?

A. I understand that he is dead.

Q. How long ago did he die?

A. I don't recollect exactly, but it must be about seven years ago.

Q. Where did Salvador Leyba live?

A. At that time he was living in Santa Fe.

Q. Were you ever present at any conversation between Salvador Leyba and Mariano F. Sena, when they talked about the sale which is evidenced by this deed?

A. I was working at the house of Jose Sena when they called me to sign that deed.

Q. Who was present then?

A. Myself, Mariano Sena, Jose Sena and Salvador Leyba.

Q. Well, now, was there any conversation between Salvador Leyba and Mariano Sena at that time—did they talk to each other?

A. They had some conversation. Mariano Sena asked Salvador—

Mr. DAVIS: I object to the conversation on the ground it is hearsay.

Mr. CLANCY: I will modify my question.

Q. Did you hear any statements made by Salvador Leyba about his family?

A. Yes, sir.

Q. Well, tell us what he said on that subject?

A. He said that Jose de Leyba was the first of the family. That he had had a son named Simon Leyba, and Simon had another son whose name was Salvador Antonio Leyba, and Salvador Antonio Leyba had a son whose name was Juan Angel Leyba, and 101 Juan Angel Leyba had a son whose name was Salvador Leyba, who made the deed or transfer.

Q. Did he say whether or not Juan Angel Leyba had any other children?

A. I think he said he had two girls. I don't remember exactly.

Q. How long had you been acquainted with Salvador Leyba?

A. I knew him about one year.

Cross-examination by Mr. REYNOLDS:

Q. You testified in the case of Mariano Sena against the United States, The American Turquoise Company and J. T. McNulty, in the Court of Private Land Claims, did you not?

A. I testified in this same case, just as I am testifying now, and to the same effect.

Q. Did you testify in the case of Sena et al., in the court of private land claims at the time the case was on trial in that court for confirmation of this grant?

Mr. CLANCY: I will admit that this is the same witness who testified in the court of private land claims as indicated by your question.

Mr. REYNOLDS:

Q. Did you testify in that case that Salvador Antonio Leyba was a son of Simon Leyba?

A. That Simon was the father of Salvador Antonio Leyba, Yes, sir.

Q. Did you testify in that case that Salvador Leyba, who was carrying on that conversation with Sena, and that he said that Salvador Antonio Leyba was a son of Simon Leyba?

A. No, sir.

Q. What did you testify, if you remember?

A. I only testified what I have just finished testifying now. That Simon was the father of Salvador Antonio Leyba.

Q. I will put this question to you—(Was this question asked you by Mr. Clancy as follows—reading from a printed transcript of the case in court of private land claims—Q. State if you can recollect, what took place at that conversation, and what was said by Salvador Leyba? A. I was working at Jose Sena's, when Mariano Sena and this man Leyba called me to sign that document or transfer as a witness, and I signed it, and Mariano Sena asked Salvador Leyba if there were any other heirs to that interest that he had bought, and

he said that Jose Leyba was the original party to that grant
102 and that Simon Leyba was a son of this man Jose Leyba.

Salvador Leyba was a son Simon Leyba, and that Juan Angel was a son of Salvador Leyba and Salvador Leyba was a son of Juan Angel—that is all I heard." Is that correct?

A. Yes, sir.

Q. Why do you now say the statement was made that Salvador Antonio Leyba was the son of Simon Leyba?

A. Because Jose Leyba was the father of Simon, and Simon Leyba was the father of Salvador Antonio Leyba. Juan Angel was the son of Salvator Antonio Leyba, and Juan Angel Leyba was the father of Salvador Leyba.

Q. When was your attention called to the fact that Salvador Antonio Leyba and not Salvador Leyba, was the son of Simon Leyba?

A. My attention was called then to Simon Leyba and then to Salvador Antonio Leyba and then to Juan Angel.

Q. Wasn't your attention called to it since this case come on trial?

A. No, sir—when they asked him if there were any more heirs.

Q. How did you happen to omit the name "Antonio" in giving the conversation between Mariano Sena and Salvador Leyba at the time the deed was made—as shown in this record?

A. I supposed that they knew his name was Salvador Antonio—who was the grandfather of Salvador.

Q. How long did this conversation between Mariano Sena and Salvador Leyba last at the time the deed made? How long did it take them to have this conversation about his family?

A. It took about ten minutes.

Q. Have you talked to anybody since about that conversation?

A. Not that I remember of.

Q. Haven't you talked to Mariano Sena or Mr. Clancy about that conversation since?

A. I may have.

Q. Haven't you as a matter of fact?

A. Not with Mr. Clancy.

Q. Did you talk with Mr. Sena?

A. He only told me they were going to bring the case up again.

Q. Has neither Sena or counsel or anybody else called
103 your attention to the omission of the name "Antonio" in the
name of Salvador Leyba, so as to distinguish between the son
of Simon Leyba and son of Juan Angel Leyba?

A. No, sir.

Q. Was there any other heirs mentioned at the time that conversation took place?

A. Not that I remember of.

Redirect examination by Mr. F. W. CLANCY:

Q. When you testified in the court of private land claims, did you say that the son of Simon Leyba was Salvador Leyba, or did you say that he was Salvador Antonio Leyba?

A. I believe so.

Q. Well, which did you say at that time?

A. I said it was Salvador Antonio Leyba.

Q. Is it your recollection that that is what you said at that time in that court?

A. Yes, sir.

ELIGIO SEDILLO, sworn.

Direct examination by Mr. F. W. CLANCY:

Q. State your name?

A. Eligio Sedillo.

Q. Where do you reside?

A. I live on San Francisco Street, Santa Fe.

Q. How long have you lived here in Santa Fe?

A. Since I was born.

Q. How old are you?

A. I am seventy-five years of age.

Q. Do you know a spring south of Santa Fe called Coyote Spring?

A. Yes, sir.
Q. How long have you been acquainted with that spring?
A. I have known it since the year 1853.
Q. Do you know where the San Marcos Spring is?
A. Yes, sir.
Q. How far is the Coyote Spring from the San Marcos Spring?
A. About one and a half miles.
Q. How is the Coyote Spring situated on the ground—in what kind of a place is it?
A. There is an arroyo there—it is in an arroyo.
Q. Has that arroyo any name?
104 A. It is called Arroyo del Polo.
Q. What is "Polo?"
A. It is a *weed*.
Q. Did you see any signs of houses or habitations near the Coyote Spring when you first knew it?
A. Yes, sir.
Q. Describe them?
A. I saw something like a house.
Q. How large a house did it seem to be?
A. The walls were that high (indicating between three and four feet high.)
Q. How many rooms do you think there were in that house?
A. I did not go near to it to see. I used to pass by on the trail and go to the spring.
Q. Have you ever heard of a place called the Cuesta or Arroyo del Oregano?
A. I knew it.
Q. Well, where is the Cuesta del Oregano?
A. It is in front of the Ojo Coyote. Towards Ojo San Marcos.
Q. Do you know where the Arroyo of La Cuesta del Oregano is?
A. Yes, sir.
Q. Where is that?
A. It is south from the spring.
Q. From which spring?
A. Of the Coyote Spring.

No cross-examination by defendants' counsel.
Plaintiff rests.

Mr. REYNOLDS to Court: We desire to present to the court an instruction to the jury to find for the defendant, as follows:

"The court instructs the jury that under the pleadings and the evidence introduced, the plaintiff is not entitled to recover in this action, and your verdict will be for the defendant, and the court instructs the jury to return a verdict of not guilty as to the defendant, The American Turquoise Company."

August 29th, 1905.

Argument on this motion was heard by the court, and the same not being concluded at the hour of adjournment, an adjournment was taken until 9:30 a. m. Wednesday, August 30th, 1905.

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WEDNESDAY MORNING, August 30th, 1905.

The argument on motion of the defendant was continued and at its conclusion the court stated, as follows:

The COURT: Gentlemen: I want to think over this matter somewhat before passing on it, and I think I will let the defendant begin to put in its testimony. I will endeavor to decide the motion by tomorrow morning.

Thereupon the defendant proceeded with its case as follows:

Defendant's Case.

Mr. DAVIS: Before proceeding to introduce certain documentary evidence, I desire to call attention of the court and jury to the fact, that it is admitted by the pleadings in this case that in the year 1861, the United States government caused its surveys to be surveyed over the lands now claimed as the Jose de Leyba land grant, and in 1885 that land was thrown open to settlement by the United States government, by the order of its proper officers, and filed with the register and receiver of this land office.

As following that admission, I desire to introduce in evidence certain location notices, showing the taking up by various persons of the lands in controversy in this suit, which I will file with the introduction of other documents, bringing the title down to the defendant, in this case.

Mr. DAVIS: First, I desire to offer in evidence a certified copy of the location notice of the Castillian Lode Mining Claim.

Mr. CLANCY: I would suggest, while of course I am going to make objection to these, I suggest that they may be introduced by a mere statement of what they are, taken by the stenographer, to avoid the necessity of loading down the record with all these long copies of the papers.

Mr. DAVIS: That of course will be perfectly satisfactory to us.

Mr. DAVIS: The first instrument I offer in evidence is the certified copy of notice of location filed in the office of the probate clerk of Santa Fe county, on the 22nd day of June, 1885, 9:30 o'clock in the morning, locating the Castillian Quartz lode mining claim, and being the location notice of the mine of that name set out in the complaint, located by M. K. Parmalee on the 1st day of April, 1885.

Marked Defendant's Exhibit No. 1.

106 Mr. DAVIS: Second, the certified copy of the location notice of the Muniz as filed in the office of the probate clerk of Santa Fe county, on the 1st day of February, 1890, at 1:30 o'clock p. m., showing the location of the mine known as the Muniz mine and declaring it was located on the 31st day of January, 1890, by Pedro Muniz and Faustin Muniz, locators.

Marked Defendant's Exhibit No. 2.

Mr. DAVIS: Third, I offer in evidence a certified copy of the location notice of the Morning-Star Lode, as filed in the office of the probate clerk of Santa Fe county, on the 24th day of August, 1891, at 2 o'clock p. m., declaring the location of the Morning-Star lode, on the 2nd day of June, 1891, by J. M. Allen.

Marked Defendant's Exhibit No. 3.

Mr. DAVIS: I next offer in evidence a certified copy of the location notice of the "Sky-Blue Turquoise lode, as filed for record in the office of the probate clerk of Santa Fe county on the 18th day of March, 1892, reciting the location of the Sky-Blue Turquoise lode, on the 2nd day of November, 1891, by C. G. Storey, locator.

Marked Defendant's Exhibit No. 4.

Mr. DAVIS: Certified copy of the location notice of the Gem Lode, as filed for record in the office of the probate clerk of Santa Fe county, on the 24th day of August, 1891, reciting the location of that lode on the 2nd day of June, 1891, by C. G. Storey, locator.

Marked Defendant's Exhibit No. 5.

Mr. CLANCY: The plaintiff objects to the admission of each of the location notices on the ground that they are not material or relevant to any issue made by the pleadings in this case, and that no valid mining location could be made on these lands so as to give the locators and their successors in title any legal rights.

Objection overruled by the court.

Exception reserved by plaintiff.

Mr. DAVIS: I now offer in evidence a certified copy of a quit claim deed made by M. K. Parmalee as grantor to H. B. Cartwright, as grantee, dated February 19th, 1889, and acknowledged on February 20th, 1889, before George W. Knaebel, notary public of Santa Fe county, in consideration of the sum of one thousand dollars, conveying to the grantee "The Castillian Quartz Lode Mining Claim," as described in the location notice of that claim heretofore introduced. Recorded in the office of the probate clerk 107 of Santa Fe county on the 15th day of April, 1889, in Book H, record of mines, page 608.

Marked Defendant's Exhibit No. 6.

Mr. CLANCY: Plaintiff objects to the introduction of the deed in evidence for the same reasons as those upon which objection was made to the introduction of the location notices.

And it may be stated here that the same objection is to be considered made to all the deeds that the defendant is now introducing in evidence, so as to make one ruling and exception.

Objection overruled.

Exception reserved by plaintiff's counsel.

Mr. DAVIS: I now offer in evidence a mining deed, Hiram B. Cartwright as grantor to Eleanor A. Allen, a resident of the county of Cook, state of Illinois, dated April 23rd, 1890, acknowledged April 23rd, 1890, before George W. Knaebel, notary public for Santa Fe county, and recorded April 23rd, 1890, in Book I, records of mining deeds, page 18, Santa Fe county, N. M., and conveying to the grantee the Castillian Quartz Lode mining claim, as described in the mining location heretofore introduced.

Marked Defendant's Exhibit No. 7.

Mr. DAVIS: I now offer in evidence a mining deed made by Pedro Muniz and Faustin Muniz, to Eleanor Story Allen of the county of Cook, and state of Illinois, dated May 7th, 1891, acknowledged before Edward L. Bartlett, notary public, Santa Fe county, New

Mexico, and recorded May 8th, 1891, Book I, page 506, mining deeds, records of Santa Fe county, New Mexico, conveying to the grantee, a portion of the mining claim and location known as the Muniz mine, as described in the location notice heretofore introduced, conveying 205½ feet off the east end of said lode.

Marked Defendant's Exhibit No. 8.

Mr. DAVIS: I now offer in evidence a mining deed of Pedro Muniz and Martina Quintana, his wife, and Faustin Muniz and Rufina Baca, his wife, to Eleanor Allen, of Chicago, Ill., dated November 20th, 1891, acknowledged before Austin L. Kendall as notary, on the same date, and filed for record on the 18th day of December, 1891, and duly recorded in the records of Santa Fe county, New Mexico, in Book I, records of deeds, page 563, conveying to the grantee all their right, title and interest of the parties of the first part, in and to the mining location known as the Muniz mine, according to the location notice before introduced, 108 and specifically conveying the remaining portion of the mine not conveyed by the deed heretofore introduced.

Marked Defendant's Exhibit No. 9.

Mr. DAVIS: I now offer in evidence a mining deed of A. H. Allen, James M. Allen, and Eleanor A. Allen, to Chauncey G. Storey, of the county of Santa Fe, Territory of New Mexico, dated January 27th, 1892, duly acknowledged before John D. Allen, a notary public, on the 27th day of January, 1892, and filed for record in the office of the probate clerk of Santa Fe county on the 3rd day of May, 1892, and recorded in Book J of mining deeds, page 23, conveying to the party of the second part the following mining claims:

The Castillian Mine Quartz Lode claim as described in the location notice of said claim already introduced.

The Morning-Star Lode, as located by J. M. Allen, and described in the location notice already introduced.

Marked Defendant's Exhibit No. 10.

Mr. DAVIS: I next offer in evidence a mining deed made by Eleanor Storey Allen and — — to Chauncey G. Storey of Cerillos, New Mexico, dated January 27th, 1892, acknowledged on the 27th day of January, 1892, before John D. Allen, notary public of Santa Fe county, New Mexico, and filed for record on the 27th day of January, 1892, in the office of the probate clerk of Santa Fe county, New Mexico, recorded on the same date in Book J, records of mining deeds, page 601, and conveying to the party of the second part the Muniz mine, according to the location notice of said mine already introduced in evidence.

Marked Defendant's Exhibit No. 11.

Mr. DAVIS: I next offer in evidence a mining deed made by C. G. Storey, to the American Turquoise Company, a corporation, organized under the laws of the State of Illinois, dated March 5th, 1892, acknowledged before J. Edward Fry, notary public of the State of Illinois, county of Cook, on the 5th day of March, 1892, and filed for record in the office of the probate clerk of Santa Fe county on the 19th day of March, 1892, and recorded on same date in Book I, page 603, records of mining deeds of Santa Fe county; conveying

to The American Turquoise Company, The Old Castillian Mining claim, according to the location notice of said mining claim already introduced in evidence; also, the Morning-Star mining claim according to the location notice of said Morning-Star mining 109 claim already introduced in evidence; also the Muniz mine, according to the location notice of said mining claim already introduced in evidence.

Also the Gem mining claim, according to the location notice of said claim already introduced in evidence.

And also conveying the mining claim known as the Sky Blue mining claim according to the location notice of said mining claim as already introduced in evidence.

Marked Defendant's Exhibit No. 12.

Mr. CLANCY: As to this last deed, I desire to make a special objection that the grantee, being a foreign corporation, no showing is made that it had complied with our laws so as to be authorized to do business in the Territory of New Mexico, or to purchase or hold real estate in the Territory of New Mexico.

Objection overruled by the court.

Exception reserved by plaintiff.

Mr. DAVIS: I next offer in evidence a deed of Chauncey G. Storey of Cerrillos, New Mexico, to The American Turquoise Company, a corporation, organized under the laws of the State of Illinois, dated January 27th, 1892, acknowledged on January 27th, 1892, before John D. Allen, a notary public of Santa Fe county, New Mexico, and filed for record in the office of the probate clerk on the 27th day of January, 1892, and recorded in Book J, of mining deeds on page 13, conveying to The American Turquoise Company of Illinois, the Muniz mine, as described in the location notice of said mine already introduced in evidence.

Marked Defendant's Exhibit No. 13.

Mr. CLANCY: To this deed the same special objection is made as to the last one.

Objection overruled.

Exceptions reserved by plaintiff.

Mr. DAVIS: I now offer in evidence a deed of trust of The American Turquoise Company, a corporation created and existing under the laws of the State of Illinois, to The Farmer's Loan and Trust Company, a corporation created and existing under the laws of the State of New York, dated June 6th, 1892, conveying to The Farmers' Loan and Trust Company, the mining claim known as the Old Castillian, according to the location notice of said mine, already introduced in evidence; the mining claim known as the 110 Morning-Star according to the location notice of said claim already introduced in evidence.

The mining claim known as the Muniz mine, according to the location notice already introduced in evidence.

The mining claim known as the Gem, according to the location notice of said mining claim, already introduced in evidence.

The mining claim known and described as the Sky-Blue mining

claim, according to the location notice of said mining claim, already introduced in evidence.

In trust, to secure Bonds to the amount of two hundred and fifty thousand dollars, acknowledged on the 6th day of June, 1892, before Edward B. Lafatre, notary public, in the county and state of New York, and duly recorded in the office of the probate clerk and ex-officio recorder for Santa Fe county, New Mexico.

Marked Defendant's Exhibit No. 14.

Mr. CLANCY: We desire to make the same special objection to the introduction of this deed of trust.

Objection overruled by the court.

Exception reserved by plaintiff.

Mr. DAVIS: I next offer in evidence a deed of The American Turquoise Company, by J. H. Sutherlin, master, and commissioner, to Howard Carter, of the City of Chicago, and William R. Alling, of the county and state of New York, on the consideration of \$85,481.52, as found and adjudged to be due in a certain legal proceeding on the deed of trust last introduced, and conveying the Old Castillian Mining Claim; the Morning-Star, Gem, Sky-Blue and Muniz mining claims, according to the location notices of said several mining claims heretofore introduced. Acknowledged before C. H. Gildersleeve, clerk of the district Court for the First Judicial District, Territory of New Mexico, on the 11th day of June, 1897; filed for record on same date in the office of the probate clerk for Santa Fe county, and recorded in Book K, mining deeds, page 63.

Mr. DAVIS (to Clancy): Do you desire me to introduce the court proceedings leading up to this?

Mr. CLANCY: Oh, no. I don't think it is necessary.

Marked Defendant's Exhibit No. 15.

Mr. DAVIS: I next offer in evidence a deed of W. R. Alling and Howard Carter, to The American Turquoise Company, a 111 corporation organized under the laws of the State of New Jersey, dated June 6th, 1892, acknowledged before Will C. Clarke, notary public of the county of Cook, State of Illinois, on the 14th day of November, 1899, and before Cornealis A. Lighton, notary public for the city and county of New York, November 20th, 1899, filed for record in the office of the probate clerk and ex-officio recorder of Santa Fe county, on the 15th day of December, 1899, duly recorded in Book K, record of mining deeds at pages 337, and following; conveying and quit-claiming all the property, real and personal and mixed, conveyed to them by J. H. Sutherlin, master and commissioner, in chancery, by deed dated June 11th, 1897, recorded on the same day in Book K, record of mining deeds, at pages 67, and following—revenue stamps cancelled.

Marked Defendant's Exhibit No. 16.

Mr. CLANCY: I make the same special objection to this deed as to the other.

Overruled.

Exception by plaintiff.

Mr. CLANCY: I think I should say that no objection is intended

to be made on account of the non-production of the originals of any of these records.

Mr. REYNOLDS: We have another deed, of Howard Carter and Laura J. Carter, his wife, William R. Alling and —— Alling his wife, to American Turquoise Company of New Jersey, mining deed, dated December 15th, 1899, recorded Feb. 13th, 1900, in Book K, record of mining deeds, pages 380 and following, conveying all and singular the following described mining claims and property situate and being in the county of Santa Fe, Territory of New Mexico. All *that* certain mining claims located and known as the Old Castillian, the Morning Star, the Muniz, the Geni and the Sky-Blue, all of which said claims are in the Cerrillos Mining District.

Marked Defendant's Exhibit No. 17.

Mr. CLANCY: We make the same special objection to that. Objection overruled.

Exception reserved by plaintiff.

Mr. DAVIS: I now offer in evidence a Notice to Hold, filed by The American Turquoise Company claimant, by J. P. McNulty, agent. For notice to hold and work in good faith the mining claim known as the Gem, as required by amendment 2224, Revised Statutes of the United States, approved July 13, 1894, the same being recorded in December, Book No. 1, of the records of Santa Fe county, page 207.

112 Mr. CLANCY: We make the same objection to this as to the mining location notices and the special objection with regard to the American Turquoise Company.

Objection overruled.

Exception reserved by plaintiff.

Marked Defendant's Exhibit No. 18.

Mr. DAVIS: Next I offer a notice to hold and work in good faith the mining claim known as the Morning Star, as required by said amendment to the Revised Statutes, recorded December 24th, 1894, Book 1, Proof of Labor, filed by the American Turquoise Company, J. P. McNulty, its agent.

Mr. CLANCY: To which we make the same objection.

Overruled. Exception.

Marked Defendant's Exhibit No. 19.

Mr. DAVIS: I next introduce notice to hold and work in good faith mining claim known as the Castillian, recorded December 24th, 1894, Book 1, proof of labor, page 208.

Same objection by Mr. Clancy.

Objection overruled.

Exception reserved.

Marked Defendant's Exhibit No. 20.

Mr. DAVIS: I now introduce a notice to hold and work in good faith the mining claim known as the Sky Blue mining claim, recorded December 24th, 1894, Book 1, proof of labor, filed by the American Turquoise Company by J. P. McNulty, agent.

Objected to for same reasons by defendant's counsel.

Objection overruled.

Exception reserved.

Marked Defendant's Exhibit No. 21.

Mr. DAVIS: Next I offer in evidence proof of labor for the year 1896, of the Old Castillian, Morning Star, Muniz, Gem, and Sky Blue mining claims, recorded in Book 1, record of proof of labor, Santa Fe county, page 384, 21st day of Aug., 1897, reciting the doing of the annual work for the year 1896 as required on the said mining claims for the American Turquoise Company, by J. P. McNulty, agent.

Objected to by plaintiff's counsel for the same reasons heretofore stated.

Objection overruled.

113 Exception reserved.

Marked Exhibit No. 22.

Mr. DAVIS: I next offer in evidence proof of labor for the year 1897, of the Morning Star mining claim, filed by the American Turquoise Company, through J. P. McNulty, its agent, on the 31st day of December, 1897, recorded in Book 1, record of proofs of labor, page 396.

Objected to for same reasons by counsel for plaintiff.

Overruled.

Exception.

Marked Defendant's Exhibit No. 23.

Mr. DAVIS: Proof of labor for the year 1897 on the Muniz mining claim, filed by the American Turquoise Company, through J. P. McNulty, its agent, on the 31st day of December, 1897, recorded in Book 1, record of proof of labor, page 396.

Objected to for reasons heretofore stated by counsel for plaintiff.

Overruled. Exception reserved.

Marked Defendant's Exhibit No. 24.

Mr. DAVIS: Next introduce proof of labor for the year 1897 on the Sky Blue mining claim, filed by the American Turquoise Company, through J. P. McNulty, its agent, recorded in Book 1, proof of labor, of Santa Fe county, at p. —.

Objected to for same reasons by counsel for plaintiff.

Overruled. Exception reserved.

Marked Defendant's Exhibit No. 25.

Mr. DAVIS: Next introduce proof of labor for the year 1897 of the Old Castillian mining claim, filed by the American Turquoise Company through J. P. McNulty, its agent, recorded in Book 1, record of proof of labor, Santa Fe county, page 395 on the 31st day of December, 1897.

Objected to for same reasons by counsel for plaintiff.

Overruled. Exception reserved.

Marked Defendant's Exhibit No. 26.

Mr. DAVIS: I next offer in evidence proof of labor on the Gem mining claim, filed 31st day of December, 1897, recorded in Book 1, of record of proof of labor, page 395.

Objected to by plaintiff's counsel for same reasons.

Overruled. Exception reserved.

Marked Defendant's Exhibit No. 27.

114 Mr. DAVIS: I offer in evidence proof of labor for the year 1898, on the Morning Star mining claim, filed by the American Turquoise Company, through J. P. McNulty, agent, on the 2nd day of January, 1899, recorded in Book 1, of the record of proof of labor, page 440.

Objected to for same reasons by plaintiff's counsel.

Overruled. Exception reserved.

Marked Defendant's Exhibit No. 28.

Mr. DAVIS: Next offer proof of labor for the year 1898, of the Sky Blue mining claim filed by the American Turquoise Company, through J. P. McNulty, agent, on the 2nd day of January, 1899, and recorded in Book 1, records of proof of labor, page 439.

Objected to for same reasons by plaintiff's counsel.

Overruled. Exception reserved.

Marked Defendant's Exhibit No. 29.

Mr. DAVIS: I next offer in evidence, proof of labor for the year 1898, of the Old Castillian mining claim, filed by the American Turquoise Company, through J. P. McNulty, agent, recorded in Book 1, record of proof of labor, page 441, Santa Fe county, on the 2nd day of January, 1899.

Objected to by counsel for plaintiff for same reason.

Overruled. Exception reserved.

Marked Exhibit No. 30.

Mr. DAVIS: I offer in evidence proof of labor, for the year 1898, on the Muniz mining claim, filed by the American Turquoise Company, through J. P. McNulty, agent, on the 2nd day of January, 1899, recorded in Book 1, records of proof of labor, page 441.

Objected to for same reasons by plaintiff's counsel.

Overruled. Exception reserved.

Marked Defendant's Exhibit No. 31.

Mr. DAVIS: I next offer in evidence, proof of labor for the year 1898 on the Gem mining claim, filed by the American Turquoise Company, through J. P. McNulty, agent, 2nd day of January, 1899, and recorded in Book 1, of records of proof of labor, page 442.

Objected to for same reasons by plaintiff.

Overruled. Exception reserved.

Marked Defendant's Exhibit No. 32.

Mr. DAVIS: I offer in evidence proof of labor for the year 1899 of the Old Castillian mining claim, filed by the American Turquoise Company, through J. P. McNulty, agent, recorded in Book 1, 115 records of proof of labor, page 491, on the 4th day of January, 1900.

Objected to for the same reason by plaintiff's counsel.

Overruled. Exception reserved.

Marked Defendant's Exhibit No. 33.

Mr. DAVIS: I offer in evidence proof of labor for the year 1899, on the Sky Blue mining claim, filed by the American Turquoise Company through J. P. McNulty, agent, on the 4th day of June, 1900, and recorded in Book 1, records of proof of labor, page —.

Objected to by plaintiff's counsel for same reasons.

Overruled. Exception reserved.

Marked Defendant's Exhibit No. 34.

Mr. DAVIS: Next proof of labor for the year 1899, on the Morning Star mining claim, filed by the American Turquoise Company through J. P. McNulty, agent, recorded January 4, 1900, Book 1, page 493, records of proof of labor.

Objected to for same reasons by counsel for plaintiff.

Overruled. Exception reserved.

Marked Defendant's Exhibit No. 35.

Mr. DAVIS: Next proof of labor for the year 1899, on the Gem mining claim, filed by the American Turquoise Company, dated January 4th, 1900, recorded in Book 1, page 493.

Objected to for same reasons by counsel for plaintiff.

Overruled. Exception.

Marked Defendant's Exhibit No. 36.

Mr. DAVIS: Next proof of labor for the year 1899 on the Muniz mining claim, filed by the American Turquoise Company by J. P. McNulty, agent, recorded in Book 1, page 465.

Objected to for the same reason by plaintiff.

Overruled. Exception.

Marked Defendant's Exhibit No. 37.

Mr. DAVIS: Next I offer in evidence, proof of labor for the year 1900 on the Gem mining claim, filed by the American Turquoise Company on the 21st day of December, 1900, recorded in Book 1, records of proof of labor, page 514.

Objected to by plaintiff's counsel for same reasons.

Overruled. Exception.

Marked Defendant's Exhibit No. 38.

Mr. DAVIS: Next offer in evidence proof of labor for the year 1902, on the Morning Star mining claim, filed by the American Turquoise Company, through J. P. McNulty, its agent, 116 on the 21st day of September, 1900, and recorded in Book 1, records of proof of labor, page 514.

Objected to by plaintiff's counsel for same reasons.

Overruled. Exception.

Marked Defendant's Exhibit No. 39.

Mr. DAVIS: Next offer in evidence proof of labor for the year 1900 on the Muniz mining claim, filed by the American Turquoise Company through J. P. McNulty, agent, and recorded in Book 1, of proof of labor, page 515, on the 21st day of September, 1900.

Objected to for same reasons by plaintiff's counsel.

Overruled. Exception.

Marked Defendant's Exhibit No. 40.

Mr. DAVIS: I next offer proof of labor for the year 1900, on the Old Castillian mining claim, as filed by the American Turquoise Company through J. P. McNulty, agent, on the 21st day of September, 1900. Recorded.

Objected to by plaintiff's counsel for same reasons.

Overruled. Exception.

Marked Defendant's Exhibit No. 41.

Mr. DAVIS: I next offer in evidence proof of labor for the year 1900, on the Sky Blue mining claim, filed by the American Tur-

quoise Company through J. P. McNulty, agent, on the 21st day of September, 1900. Recorded.

Objected to by plaintiff's counsel for same reasons.

Objection overruled. Exception.

Marked Defendant's Exhibit No. 42.

Mr. DAVIS: Offer in evidence proof of labor for the year 1901, on the Muniz mining claim, filed by the American Turquoise Company through J. P. McNulty, agent, on the — day of — and recorded in Book 1, proof of labor, page 586.

Objected to by plaintiff's counsel for same reasons.

Overruled. Exception.

Marked Defendant's Exhibit No. 43.

Mr. DAVIS: I next introduce proof of labor for the year 1901 of the Old Castillian mining claim.

Objected to by plaintiff for same reasons.

Overruled. Exception.

Marked Defendant's Exhibit No. 44.

Mr. DAVIS: I next offer in evidence proof of labor for the year 1901 on the Morning Star mining claim.

117 Objected to for same reasons by plaintiff.

Overruled. Exception.

Marked Defendant's Exhibit No. 45.

Mr. DAVIS: I next offer in evidence proof of labor for the year 1901 on the Gem mining claim, duly recorded.

Objected to for same reasons by plaintiff's counsel.

Overruled. Exception.

Marked Defendant's Exhibit No. 46.

Mr. DAVIS: I next offer in evidence proof of labor on the Sky Blue mining claim for the year 1901, duly recorded.

Objected to for same reasons by plaintiff's counsel.

Overruled. Exception.

Marked Defendant's Exhibit No. 47.

Mr. DAVIS: I next offer in evidence proof of labor for the year 1902 on the Sky Blue mining claim. Duly recorded.

Objected to by plaintiff's counsel for same reasons.

Objection overruled. Exception.

Marked Defendant's Exhibit No. 48.

Mr. DAVIS: I next offer in evidence proof of labor on the Gem mining claim for the year 1902, duly recorded.

Objected to by plaintiff's counsel for same reasons.

Overruled. Exception.

Marked Defendant's Exhibit No. 49.

Mr. DAVIS: I next offer in evidence proof of labor for the year 1902 on the Muniz mining claim, duly recorded.

Objected to by plaintiff's counsel for reasons before stated.

Overruled. Exception.

Marked Defendant's Exhibit No. 50.

Mr. DAVIS: I next offer in evidence proof of labor for the year 1902 on the Old Castillian mining claim. Duly recorded.

Objected to by plaintiff's counsel for same reasons.

Overruled. Exception.

Marked Defendant's Exhibit No. 51.

Mr. DAVIS: I next offer in evidence proof of labor for the year 1902 on the Morning Star mining claim. Duly recorded.

Objected to by plaintiff's counsel for reasons before stated.

Overruled. Exception.

Marked Defendant's Exhibit No. 52.

Mr. DAVIS: I next offer in evidence proof of labor for the year 1903 on the Muniz mining claim, duly recorded.

Objected to by plaintiff's counsel for the reasons heretofore set out.

118 Mr. CLANCY: In addition to the other objections, I make the objection that this proof was made and filed long after the beginning of the suit and would therefore be inadmissible as to anything that could possibly be in issue in this suit, and I make the same objection to any of the others filed after the beginning of the suit.

The COURT: I will let this in for the purpose of proving the labor was done at the time of the filing of this suit, for the period covering and including the year 1903.

Exception reserved by Mr. Clancy.

Marked Exhibit No. 53.

Mr. DAVIS: I now offer in evidence proof of labor of the Sky Blue mining claim for the year 1903, filed by the American Turquoise Company, through J. P. McNulty, agent, December 30th, 1903, and recorded in record of proof of labor, Santa Fe county, page 83.

Mr. REYNOLDS: We desire to show ownership or possession of these properties up to the date of the filing of this suit. The suit was filed in May, 1903.

The COURT: I have admitted it up to that date.

Same objection made by plaintiff's counsel.

Overruled. Exception.

Marked Defendant's Exhibit No. 54.

Mr. DAVIS: I offer in evidence proof of labor on the Morning Star mine for the year 1903, by the American Turquoise Company, by J. P. McNulty, its agent, filed the 30th day of December, 1903, and recorded in Book 2, record of proof of labor, Santa Fe county, at page 82.

Objected to by plaintiff's counsel for the reasons heretofore stated.

Overruled. Exception reserved.

Marked Defendant's Exhibit No. 55.

Mr. DAVIS: I offer in evidence proof of labor of the Old Castillian mine for the year 1903, by the American Turquoise Company by J. P. McNulty, agent, filed on the 30th day of December, 1903, and recorded in Book 2, proof of labor, page 84.

Objected to by plaintiff's counsel for the reasons heretofore stated.

Objection overruled. Exception reserved.

Marked Defendant's Exhibit No. 56.

119 Mr. DAVIS: I offer in evidence, proof of labor on the Gem mine, for the year 1903, by the American Turquoise Company, through J. P. McNulty, agent, recorded in Book 2, page 85.

Objected to for same reasons by plaintiff's counsel.

Objection overruled. Exception reserved.

Marked Defendant's Exhibit No. 57.

Owing to the fact that Judge Mills had to attend a session of the Supreme Court, it being 12:30 p. m., Wednesday, Aug. 30th, an adjournment was taken until Thursday, Aug. 31, 1905, at 2 o'clock p. m.

THURSDAY, Aug. 31, 2 p. m., 1905.

Mr. CLANCY: I desire to call Your Honor's attention to an objection that was not definitely passed upon, and that is as to the papers coming from the custody of the Territorial Librarian.

The COURT: I think I will admit them.

To which ruling counsel for the defendant excepts.

See Plaintiff's Exhibit E.

MAJOR FRITZ MULLER, SWORN.

Direct examination by Mr. M. G. REYNOLDS:

Q. What is your official position?

A. Receiver of the United States land office, at Santa Fe, New Mexico.

Q. Are you custodian of the records?

Mr. CLANCY: That has been proven already.

Mr. REYNOLDS:

Q. Can you produce the plats of Townships 14, 15, 16 north, Range 8 east?

A. Yes; I have them here.

Q. Will you look at the plat showing the survey of the government of Township 15 north, Range 8 east, and state whether or not that is one of the official plats on file in your office?

A. Yes, sir; that is an official plat which is recognized in the office and approved by the department.

Mr. REYNOLDS: I now offer the plat for Township 15 north, Range 8 east, of the principal meridian of New Mexico, in evidence, together with the official endorsement thereon, with a view 126 of showing the time when the surveys were extended over it and the time when it was filed in the office of the Register and Receiver for the purpose of location.

Marked Defendant's Exhibit No. 58.

Mr. CLANCY: The pleadings show that and it is admitted. It unnecessarily incumbers the record with a plat.

Mr. REYNOLDS: I will file a plat, if necessary.

Mr. REYNOLDS: I now offer in evidence the official plat of fractional Township No. 16 north, Range 8 east, of the New Mexico principal meridian, and do that for the purpose of showing the location, as far as they go, of claims in that section, and explain to